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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC., *et al.*,
Petitioners

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

CONSUMER ALERT AND PACIFIC LEGAL FOUNDATION,
Petitioners

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

UNITED STATES DEPARTMENT OF TRANSPORTATION, *et al.*,
Petitioners

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF *AMICI CURIAE* CENTER FOR AUTO SAFETY, PUBLIC CITIZEN, AND PHYSICIANS FOR AUTOMOTIVE SAFETY IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTEREST OF *AMICI CURIAE* 1

STATEMENT OF THE CASE 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

I. THE SAFETY ACT WAS PASSED TO SAVE LIVES 4

II. NHTSA'S RESCISSION OF THE PASSIVE RESTRAINT STANDARD WAS ARBITRARY AND CAPRICIOUS AND LARGELY BASED ON IMPERMISSIBLE FACTORS 10

A. NHTSA'S RESCISSION OF THE STANDARD WAS ARBITRARY AND CAPRICIOUS 10

B. NHTSA'S RESCISSION OF STANDARD 208 WAS NOT DESIGNED TO FURTHER ITS STATUTORY MANDATE TO SAVE LIVES BUT WAS PREMISED ON THE IMPERMISSIBLE GROUND OF AIDING THE AUTOMOBILE INDUSTRY 15

III. SEAT BELT EDUCATION CAMPAIGNS DO NOT WORK AND ARE NOT AN EFFECTIVE SUBSTITUTE FOR PASSIVE RESTRAINTS 20

CONCLUSION 23

TABLE OF AUTHORITIES

Page

Statutes:

National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 *et seq.* ..... *passim*

Legislative Materials:

A BILL TO PROVIDE FOR A COORDINATED NATIONAL SAFETY PROGRAM AND ESTABLISHMENT OF SAFETY STANDARDS FOR MOTOR VEHICLES IN INTERSTATE COMMERCE TO REDUCE TRAFFIC ACCIDENTS AND THE DEATHS, INJURIES AND PROPERTY DAMAGE WHICH OCCUR IN SUCH ACCIDENTS, Hearings Before the Senate Comm. on Commerce, 89th Cong., 2d Sess. (1966) 7, 9

S. REP. No. 1301, 89th Cong., 2d Sess. (1966) 5, 6, 7, 8, 9

H.R. REP. No. 1776, 89th Cong., 2d Sess. (1966) 6, 7

112 CONG. REC. (1966) 5, 8, 9

Federal Register Notices:

34 Fed. Reg. 11,148 (July 2, 1969) 21

42 Fed. Reg. 34,289 (June 30, 1977) 22

43 Fed. Reg. 21,914 (May 15, 1978) 14

46 Fed. Reg. 12,033 (Feb. 12, 1981) 17

46 Fed. Reg. 21,172 (Apr. 9, 1981) 15, 17, 18

46 Fed. Reg. 21,203 (Apr. 9, 1981) 19, 20

46 Fed. Reg. 53,419 (Oct. 29, 1981) 19, 20

Page

Miscellaneous:

Brief for the United States, *Chrysler Corp.* v. *Department of Transportation*, 472 F.2d 659 (6th Cir. 1972) 12, 22

Brief for the United States, *Pacific Legal Foundation* v. *Department of Transportation*, 593 F.2d 1338 (D.C. Cir.), *cert. denied*, 444 U.S. 830 (1979) 12

Department of Transportation, *Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection* (Dec. 6, 1976) 11

Department of Transportation, *Traffic Safety Trends and Forecasts* (Oct. 1981) 10

Final Regulatory Impact Analysis (Oct. 1981) 13

Insurance Institute for Highway Safety, *Status Report* (June 24, 1981) 21

Nordhaus, *Comments to Notice of Proposed Rulemaking on Federal Motor Vehicle Safety Standards* (May 26, 1981) 11, 19, 21

Wall Street Journal, January 31, 1983 at 12 13

Washington Post, Dec. 28, 1982 at 2 2

White House Press Office, *Actions to Help the U.S. Auto Industry* (April 6, 1981) 18

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INTEREST OF *AMICI CURIAE*

The interest of *amici curiae* Center for Auto Safety, Public Citizen, and Physicians for Automotive Safety in this case is that the National Traffic and Motor Vehicle Safety Act ("Safety Act") shall be enforced so that motor vehicle deaths and injuries will be reduced. The passive

restraint standard rescinded by the Department of Transportation would prevent thousands of such needless deaths and injuries.

The Center for Auto Safety and Public Citizen are both non-profit public interest organizations. The Center for Auto Safety is dedicated to promoting vehicle and highway safety; and Public Citizen represents consumer interests in a wide range of issues, including vehicle safety. Physicians for Automotive Safety is a membership association of practicing physicians and health care professionals interested in reducing deaths and injuries resulting from automobile accident trauma.

All parties have consented to the filing of this brief. Letters of consent have been filed with the Clerk.

STATEMENT OF THE CASE

Automobile accidents happen day in and day out. They kill approximately 125 Americans every day; they injure and disable thousands of others, often permanently. Nearly three times more Americans have died in automobile accidents than have been killed in all the wars this Nation has ever fought. Nearly as many Americans died in car crashes last year as are listed on the walls of the Vietnam memorial.

These figures are familiar. They are compiled year after year, holiday season after holiday season.[1] Reduced to numbers, automobile fatalities are lost in the blizzard of

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[1]For example, United Press International estimated that at least 346 Americans were killed in car crashes over the recent Christmas weekend. Washington Post, Dec. 28, 1982, at 2.

statistics that we encounter daily. But they conceal a tremendous waste of human life.

This case involves the revocation of a Transportation Department rule whose implementation would prevent thousands of deaths each year on this Nation's highways. The arguments to this Court will be couched in the emotionless doctrines of administrative law. This Court will not hear testimony from mothers, fathers, and children describing the grief automobile casualties have brought to their lives. This Court will not hear the stories of the countless people who have been blinded, disfigured, or afflicted with epilepsy as a result of an automobile crash. Quadraplegics will not tell of the sadness of being paralyzed, of being dependent on others to provide for their simplest needs. But these people and their stories are at the heart of this litigation. It was to prevent these tragedies that Congress enacted the Safety Act.

SUMMARY OF ARGUMENT

The essence of this case is that the National Highway Traffic Safety Administration ("NHTSA") has rescinded the most important vehicle safety standard ever adopted – the passive restraint standard – because of its desire to aid the economically depressed U.S. automobile industry. In its place, NHTSA has proposed a seat belt education program, despite the fact that such efforts repeatedly have failed to produce significant safety benefits.

Congress has charged the Department of Transportation with the responsibility of promulgating mandatory motor vehicle safety standards for the express purpose of reducing "deaths and injuries from traffic accidents." 15 U.S.C. § 1381. Congress delegated this technology forcing mandate to the agency because of its disappointment with

the automobile industry's voluntary safety efforts, and its conclusion that attempts to modify driver behavior had failed.

The passive restraint standard would fulfill the Congressional safety mandate by preventing thousands of automobile deaths and injuries every year. But in violation of its mandate, NHTSA rescinded the Standard on the theory that the plans of some manufacturers to install poorly designed detachable automatic belts rendered the Standard's anticipated benefits uncertain. Rather than rescinding the Standard outright, however, NHTSA should have amended it to require compliance with one of the proven and highly effective passive restraint technologies that already exist, such as continuous belts or air bags. Alternatively, the agency should have retained the Standard as it existed, since even detachable belts would increase belt usage and significantly reduce deaths and injuries.

NHTSA's rescission of the Standard was arbitrary and capricious because it had no safety justification whatsoever. The judgment of the Court of Appeals should be affirmed.

ARGUMENT

I. THE SAFETY ACT WAS PASSED TO SAVE LIVES.

In 1966 Congress acted to lessen the toll of human suffering caused by automobile accidents by enacting the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 *et seq.* The express purpose of the Safety Act was to "reduce . . . deaths and injuries from traffic accidents." 15 U.S.C. § 1381. The Senate Report noted the gravity of the problem:

> It should not be necessary to call again the grim roll of Americans lost and maimed on the Na-

> tion's highways. Yet the compelling need for the strong automobile safety legislation which the Commerce Committee is today reporting lies embodied in those statistics: 1.6 million dead since the coming of the automobile; over 50,000 to die this year.

S. REP. No. 1301, 89th Cong., 2d Sess. 1-2 (1966).

Considering the bill, members of Congress lamented the public's, and their own, years of indifference to the tragedies occurring daily on the highways. Senator Bartlett noted:

> Our reactions to these grim figures — and particularly our reactions as policy makers — have too often been those of resignation and complacency. In our more reflective moments we may have sadly realized that technological progress has been an ambiguous thing, a mixed blessing . . . . But a far more appropriate response is one of outrage — that these deaths are not necessary, that something can be done, and of determination that something shall be done.

112 CONG. REC. 14254 (1966).[2]

[2]Similarly, Senator Hart stated: "Impressive auto statistics have been published for many more years than many of us can remember, but until recently there has been no great public or legislative concern. It was just sort of accepted as one of the inescapable dangers of living in a modern age.

In that sense, we have all been guilty, each of us who has ever read the highway casualty lists and shrugged and put the paper down for another sip of iced tea." 112 CONG. REC. 14251 (1966).

Congressman Bennett made a similar point: "When the people in our country read in the newspapers that almost 50,000 people have died during the past year in traffic accidents, they are briefly shocked. But then they read about tragedy every day. Tragedy is something that happens to others. But every 13 minutes some man, woman or child is killed in traffic accidents. Every 18 seconds, somebody is injured seriously in some twisted wreckage . . . ." 112 CONG. REC. 19627 (1966).

To achieve the Act's goals of reducing death and injury from auto accidents, Congress directed the Secretary of Commerce (later, the Secretary of Transportation) to establish mandatory motor vehicle safety standards. Each such standard was required to be practicable, to meet the need for motor vehicle safety, and to be stated in objective terms. 15 U.S.C. § 1392(a). Congress left no doubt that safety was to be the "overriding" and "paramount" concern. S. REP. No. 1301, 89th Cong., 2d Sess. 6 (1966); H.R. REP. No. 1776, 89th Cong., 2d Sess. 16 (1966).

By providing for mandatory standards, the Safety Act as passed differed substantially from the bill originally proposed. The bill as introduced would have empowered the Secretary to establish standards, "but he would have been required to make the determination as to their necessity." S. REP. No. 1301, *supra*, at 15. The legislation actually enacted, by contrast, represented "a determination by Congress that there is a present necessity to establish Federal motor vehicle safety standards." *Id.* Specifically, the Act required that initial motor vehicle safety standards be issued by January 31, 1967, and that new and revised standards be issued no later than January 31, 1968. 15 U.S.C. § 1392(h). Subsequent standards to be issued by the Secretary were to take effect within one year of issuance. 15 U.S.C. § 1392(c).[3]

Congress' decision to provide for mandatory safety standards reflected two principal concerns: a belief that accidents could not be stopped so that it was essential to upgrade the protective design of cars themselves; and a belief that such improvements could not be left to voluntary action on the part of the automobile industry. These concerns are described more fully below.

[3]The Secretary was also permitted to order that a safety standard take effect later than one year from issuance if the Secretary found good cause for the delay. 15 U.S.C. § 1392(c).

1. The Safety Act reflected Congress' conviction that many lives could be saved by improving the safety of the car itself. In particular, Congress hoped to reduce the destructiveness of the "second collision" – "the impact of the individual within the vehicle against the steering wheel, dashboard, [and] windshield." S. REP. No. 1301, *supra*, at 3.[4] Congress clearly recognized "the critical distinction between the causes of the accident itself and the causes of the resulting death or injury." *Id.*

Congress' emphasis on vehicle design represented a change from previous traffic safety efforts, which had concentrated on modifying the behavior of the driver, the "nut behind the wheel." Hearings on S. 3005, Before the Senate Commerce Comm., 89th Cong., 2d Sess. 47 (1966) (statement of Sen. Ribicoff). In focusing on vehicle design, Congress recognized that accidents inevitably would continue to occur, no matter what efforts were made to improve driver performance. In Senator Ribicoff's words:

> the automobile manufacturer has a part to play, taking into account that a human being is never going to be perfect. [S]ince human beings err, since drivers err, since drivers make mistakes, and they are always going to make mistakes, automobiles should be built in such a way as to minimize the damage done.

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[4] *See also*, H.R. REP. No. 1776, *supra*, at 10 ("In the course of the hearings, the committee viewed slides and films which demonstrated over and over again that there is vast room for improvement in the 'second collision' area, and that the second collision victim invariably comes up second best when he is thrust against a steering wheel, a dashboard, a windshield, or knobs and other protrusions in the interior of his vehicle.")

Id.[5] In short, "it is easier to change cars than people." 112 CONG. REC. 19635 (1966) (statement of Rep. Mackay).

2. Congress' decision to mandate federal vehicle safety standards also reflected its disappointment with the automobile industry's previous safety efforts. The Senate Report noted "disturbing evidence of the automobile industry's chronic subordination of safe design to promotional styling and of an overriding stress on power, acceleration, speed, and 'ride' to the relative neglect of safe performance or collision protection." The conviction that "safety doesn't sell," the Report concluded, was widely held in the auto industry and had "plainly resulted in the inadequate allocation of resources to safety engineering." S. REP. No. 1301, *supra,* at 2. And the auto industry's reluctance to incorporate safety features was by no means a recent phenomenon: "Until the industry had been subjected to the prod of heightened public interest and governmental concern, new models showed little improvement in safe design or in the incorporation of safety devices. Such elemental safe design features as safety door latches made their appearance as standard equipment only a decade after their desirability and feasibility had been established." *Id.*

In light of the industry's longstanding reluctance to pursue safe design, Congress concluded that voluntary safety efforts had largely failed. It therefore determined that "the unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll." *Id.* at 4.

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[5]Congressman Springer made a similar point: "Knowing the realities of life we also know that no . . . utopia will be forthcoming and that accidents will continue to happen. That being the case, we need to minimize the damage to life and limb which will be caused by the second collision." 112 CONG. REC. 19630 (1966).

Congress' disappointment with the industry demonstrated no lack of faith in Detroit's ability to build safer cars.[6] To the contrary, Congress expressed confidence that the "creative energies and vast technology of the automobile industry," if properly channelled, could produce impressive safety gains. *Id.* at 1. But in passing the Safety Act Congress refused to wait for the automobile industry to turn its attention to safety, and instead chose to assume itself the responsibility "to ensur[e] safer performance of private passenger cars." *Id.* Congress' determination that "the primary responsibility for regulating the national automobile industry must fall squarely on the Federal Government," as the Senate Report noted, was consistent with its previous regulation of the transportation industry. "Federal standards for the safety of ships," for example, "antedate[d] the Civil War;" the Interstate Commerce Commission had regulated the construction of pullman cars since 1907; and "aviation safety regulations were first authorized in . . . 1926, a year in which domestic airlines carried a total of less than 6,000 passengers."[7] *Id.* at 3-4.

History has borne out Congress' conviction that mandatory motor vehicle safety standards could substantially reduce deaths on our Nation's highways. In October 1981,

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[6]Senator Ribicoff stated: "The time has come for Detroit to accelerate what they now know, and to take sound safety ideas off the shelves and off the drafting boards and out of their experimental laboratories and give them to the American people." Hearings on S. 3005, *supra*, at 47.

[7]Senator Mondale said: "[T]he automobile industry will not stand alone among large corporations after the passage of this bill. Today there are laws regulating most hazardous economic activities and products including food and drugs, air, rail, ship transportation, construction, cosmetics and many others. In fact, the automobile industry now stands virtually alone in its complete unilateral control over the design and merchandising of its products." 112 CONG REC. 14246 (1966).

NHTSA estimated that "a 1980 car is at least 25 percent safer than a mid-1960's one, [thereby resulting in] saving over 73,000 lives since 1966 – or about 10,000 per year today." U.S. Department of Transportation, *Traffic Safety Trends and Forecasts* (Oct. 1981) at 1.[8] Passive restraint technologies now exist that would prevent thousands of additional deaths and injuries each year, but automobile manufacturers have persistently refused to implement these technologies voluntarily. As Congress foresaw, the purposes of the Safety Act can only be fulfilled if the federal Government mandates automobile design changes. In rescinding Standard 208, the Department of Transportation has failed to meet its statutory responsibility to save lives and has thwarted the very purpose of the Act.

II. NHTSA'S RESCISSION OF THE PASSIVE RESTRAINT STANDARD WAS ARBITRARY AND CAPRICIOUS AND LARGELY BASED ON IMPERMISSIBLE FACTORS.

A. NHTSA's Rescission of the Standard Was Arbitrary and Capricious.

Congress' objective in mandating vehicle safety standards was "to prevent deaths and injuries." The passive restraint standard was the most important vehicle safety standard that the Department ever adopted. The Depart-

[8]The number of deaths and injuries prevented by auto safety design improvements since 1966 unfortunately may be far surpassed by the projected rise in casualties anticipated from the increasing percentage of small cars. Without compensating safety improvements, small cars are, on the whole, more dangerous than large cars. Indeed, based primarily on the expanding number of small cars, NHTSA has estimated that the number of fatalities will climb to 70,000 a year by 1990. U.S. Department of Transportation, *Traffic Safety Trends and Forecasts* at 4 (Oct. 1981).

ment's revocation of that Standard was arbitrary and capricious because there is no conceivable safety justification for it.

Before the present Administration took office, every Secretary of Transportation to consider the question agreed that immense safety benefits could be achieved by mandating automatic occupant protection devices. It has been estimated that the Standard rescinded by NHTSA would have saved approximately 6,400 lives and have prevented 120,000 serious injuries annually.[9] Nordhaus, *Comments to Notice of Proposed Rulemaking on Federal Motor Vehicle Safety Standard Concerning Occupant Crash Protection* 1 (May 26, 1981); C.A. App. 511. If NHTSA had amended the regulation to require air bags, the Standard could save up to 9,000 additional lives a year. Department of Transportation, *Secretary's Decision Concerning Motor Vehicle Occupant Crash Protection* 40 (Dec. 6, 1976). Given the critical importance of the passive restraint standard in advancing NHTSA's safety mandate, the Secretary should have had very good reasons for its rescission.

In fact, however, the Secretary's decision was basically illogical and had no safety justification at all. The Secretary rescinded the Standard because of a belief that many manufacturers were planning to comply by installing easily detachable automatic belts. These detachable belts had never been installed in more than a handful of cars and the agency itself deemed them poorly designed. The detachable belts had been made to resemble as closely

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[9]The passive restraint standard also would produce huge net economic benefits for society at large – approximately $2.4 billion dollars every year under the rescinded standard. Nordhaus Comments, *supra*, at 1; C.A. App. 511.

as possible the existing manual belts, thereby frustrating, to the extent possible, the very purpose of the passive restraint standard. NHTSA expressed uncertainty as to whether these newly developed detachable belts would produce the desired safety benefits. But if NHTSA was uncertain about the value of detachable belts, the proper response was not to rescind the Standard, but to require better passive restraints.

It was undisputed throughout NHTSA's rulemaking that there exist other well-designed and effective passive restraint technologies. Indeed, the Government itself noted in 1977 that "[t]he passive restraint standard has been the most tested and researched safety standard in history." Brief for the United States at 66, *Pacific Legal Foundation* v. *Department of Transportation*, 593 F.2d 1338 (D.C. Cir), *cert. denied*, 444 U.S. 830 (1979). Thousands of GM Chevettes and hundreds of thousands of Volkswagen Rabbits have in recent years been equipped with automatic belts that have increased belt usage rates by an average of about 40 percentage points above the rate of use of manual belts in the same models. Air bags, which have a usage rate of almost 100%, were installed in ten thousand GM cars manufactured during the mid-1970's.[10] The cost of such passive restraint systems, moreover, is modest. NHSTA estimated that passive seat belts would cost the consumer approximately $89 per car, 46 Fed. Reg. 53,419, 53,423 (Oct. 29, 1981); C.A. App. 5; and that air bags, if produced in large volume, would sell at retail for

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[10]In 1970, General Motors in fact announced plans to install air bags as standard equipment in all its passenger cars and light trucks by the fall of 1974. Brief for the United States at 29, *Chrysler Corp.* v. *Department of Transportation*, 472 F.2d 659 (6th Cir. 1972).

$200 to $330 per car. Final Regulatory Impact Analysis (Oct. 1981) at VI-10; C.A. App. 172.[11]

NHTSA could have acted to ensure that these effective, inexpensive, lifesaving features were installed in all new cars. At the very least, the agency should have allowed the Standard to remain as it was, since even detachable belts would increase belt usage rates and thereby save lives. As the agency itself acknowledged, it could have amended the Standard to prohibit compliance by use of detachable belts – an action NHTSA admitted would increase usage rates substantially.[12]

The agency gave three basic reasons for its refusal to prohibit detachable belts: (1) a belief that Congress might view with disfavor any use-compelling features; (2) a fear of aggravating the public's supposedly "wide-spread fear" of being trapped in cars following a crash; and (3) a belief that passive restraints might complicate emergency egress from a vehicle. These reasons, as the Court of Appeals correctly concluded, are "hollow." Pet. App. 56a.

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[11]No manufacturer – domestic or foreign – currently offers air-bag-equipped cars for sale in the United States. However, Mercedes-Benz recently announced that it will offer optional airbags for the driver side on some of its 1984 model cars for sale in the United States. Wall Street Journal, January 31, 1983, at 12, col. 2.

[12]NHTSA could also have amended the Standard to require compliance with air bags. As the Court of Appeals correctly noted, NHTSA's "analysis of air bags was non-existent," and "[t]ime and again the agency flatly refused to evaluate the cost-effectiveness of these devices." Pet. App. 62a. NHTSA's failure to consider air bags was not premised on any qualms concerning their effectiveness. In fact, the agency refused to change its "conclusions [made] in 1976 and 1977 that basic air bag technology is sound and has been sufficiently demonstrated to be effective in those vehicles in current use, such that it could be considered an acceptable method of compliance with the mandate of the Act." Final Regulatory Impact Analysis at XI-4; C.A. App. 264.

First, as to NHTSA's concern about Congressional disfavor, the Court of Appeals noted that the relevant legislative history "did not provide the slightest support for NHTSA's refusal to consider a passive restraint standard that could be satisfied with continuous but not detachable belts." Pet. App. 60a. In any event, the Safety Act does not authorize the agency to base its life and death decisions on its presumptions about Congressional reactions. Second, as to NHTSA's concern about aggravating fears of entrapment, the Court of Appeals observed that only 7% of those responding to the study relied on by NHTSA volunteered that such fears contributed to their decision not to wear seat belts. And the agency's third reason – its concern about emergency egress – is, especially disingenuous. NHTSA itself never made any explicit finding that nondetachable belts would hinder emergency egress.[13] General Motors specifically stated that they would not. 43 Fed. Reg. 21,914 (May 15, 1978); C.A. App. 1724. More to the point, the most serious contributing factor to vehicle deaths and injuries is not that people cannot get out of cars after accidents, but that they are killed or severely injured from the "second collision." As NHTSA itself noted, "occupants wearing belts suffer significantly reduced risk of loss of consciousness, and are commonly able to extricate themselves with relative ease." 46 Fed. Reg. 53,419, 53,424 (Oct. 29, 1981); C.A. App. 6. In short, if people are unable to get out of a car after an accident, the reason is not that they were wearing seatbelts, but that they were seriously injured or unconscious because they were *not* wearing seatbelts.

[13] "NHTSA has never suggested, nor is there any evidence for such a proposition, that the emergency release mechanisms on continuous belts are any more susceptible to jamming or locking in event of a collision than the latch mechanism on detachable or manual belts. Indeed, for all that appears on this record, the emergency release may be *more* dependable than that on a detachable belt." Pet. App. 61a.

NHTSA's eagerness to avoid its safety mandate based on the worst available technology is hardly consistent with the technology forcing intent of the Safety Act. "Lip service aside," as the Court of Appeals put it, "there is no indication of the agency's awareness that it could act positively to develop a passive restraint standard that would advance the purpose of the Safety Act." Pet. App. at 56a.

B. NHTSA's Rescission of Standard 208 Was Not Designed to Further its Statutory Mandate to Save Lives But Was Premised on the Impermissible Ground of Aiding the Automobile Industry.

President Reagan took office during a period of economic hardship for the U.S. automobile industry. Within three weeks of his inauguration, NHTSA had begun the rulemaking process that ultimately led to the revocation of Standard 208. Neither NHTSA nor the White House made any bones about the fact that a principal reason for rescinding the Standard was to save money for U.S. automobile manufacturers.

The Court of Appeals recognized the dominance of this factor in NHTSA's considerations. It observed that the agency based its decision "at least in part 'on the fact that economic circumstances have changed since the standard was adopted in 1977' and 'difficulties of the automobile industry,' citing high unemployment, sales 'at a very depressed level,' and losses 'by even the largest of the domestic manufacturers.' " Pet. App. at 13a, *quoting* 46 Fed. Reg. 21,172 (Apr. 9, 1981). After carefully examining NHTSA's rationale for the rescission of Standard 208, the Court concluded that "[i]t is difficult to avoid the conclusion that NHTSA's analysis . . . has been distorted by solicitude for the economically depressed automobile industry – which

is not the agency's mandate – at the expense of traffic safety, which is." Pet. App. 70a. Judge Edwards in concurrence added that NHTSA's decision "appears to be nothing more than a determined effort to achieve a particular result without regard to the facts at hand." Pet. App. 75a-76a.

If anything, the Court of Appeals understated the central importance in this rulemaking of NHTSA's, and the Administration's, desire to aid the U.S. auto industry. NHTSA made this intention plain in February 1981 when it took its first public step toward revocation of Standard 208. In proposing to delay for one year implementation of the first phase of the Standard, which originally required large cars to be equipped with passive restraints by model year 1982, the agency explained:

> The difficulties of the automobile industry and some of its members are well-known. Sales continue at a depressed level. Unemployment in the domestic automobile industry remains high, with approximately 200,000 workers indefinitely laid off and more temporarily laid off. Losses by the domestic manufacturers have been reported. These losses come at a time when the domestic manufacturers must continue to spend unprecedented sums to meet the continuing demand for ever more fuel efficient cars and to meet the challenge of foreign car manufacturers.
>
> In this setting, the Department is concerned whether changed economic circumstances in the automobile industry may make the automatic restraint requirements as now scheduled impractical.

46 Fed. Reg. 12,033, 12,033-12,034 (Feb. 12, 1981); C.A. App. 1622-1623.

NHTSA did not cite manufacturers' plans to install detachable belts – the ground on which it now relies – as a reason for the delay. Rather, its decision was explicitly based on the "impact of the standard on the automobile industry;" on the "unanticipated competitive significance of the phase-in schedule," which, by starting with larger cars, disproportionately affected U.S. manufacturers; and on "the unexpectedly fast increase in the proportion of small cars." 46 Fed. Reg. 12,033, 12,034; C.A. App. 1623.

NHTSA admitted that its proposal to delay the Standard would "adversely affect safety," estimating that a one-year delay for large cars alone "would result in approximately 600 more deaths and 4,300 more serious injuries than would occur under the current schedule over the lifetime of the cars." *Id.* The agency endeavored to minimize the significance of these deaths and injuries by suggesting that their "cost" might be offset by "provid[ing] manufacturers with substantial financial and engineering resources to devote toward further improvements in automatic restraint mechanisms and systems as well as other important product programs, particularly efforts to make cars more fuel efficient." *Id.*

NHTSA published in April 1981 its final rule delaying the first phase of the Standard for one year. 46 Fed. Reg. 21,172 (Apr. 9, 1981); C.A. App. 1272. NHTSA defended its concern for the economic well-being of the automobile industry against arguments that such factors were irrelevant under the Safety Act. NHTSA likewise retracted its estimate – made only two months before – that postponement of the Standard would cause hundreds of additional deaths and thousands of injuries; it now contends

that additional casualties would be "minor." 46 Fed. Reg. 21,172, 21,176; C.A. App. 1276.

Concurrently with postponing the Standard's effective date, NHTSA proposed three alternatives for further amending Standard 208. These alternatives were: (1) reversing the sequence of compliance so that small cars would be required to comply first; (2) requiring simultaneous compliance by all cars; and (3) rescinding the automatic occupant protection requirement. Three days earlier, the White House Press Office had issued a 67-page booklet titled "Actions to Help the U.S. Auto Industry" (hereinafter "Actions"). The booklet described "President Reagan's Program for the U.S. Auto Industry" as follows:

> Promptly after taking office, President Reagan appointed a Cabinet-level Task Force to examine the problems of the U.S. auto industry. Based on the advice of the Task Force and other Presidential advisers, he has adopted a positive program to address the immediate problems of depressed sales, record losses, and severe unemployment. The program also addresses the industry's critical longer term needs to offer new competitive models and to reduce unit costs.

Actions at 1; C.A. App. 1282.

The booklet asserted that the auto industry was "burdened with stringent regulatory requirements" which diverted "engineering and managerial talent from the industry's adjustment problems." *Id.* at 2; C.A. App. 1283. The President's program included proposals by NHTSA and the Environmental Protection Agency "to rescind, revise or repropose" 34 specific regulations, thereby saving the auto industry an estimated $1.3 billion over the next five years. *Id.* at 4; C.A. App. 1285. Leading the list of NHTSA's contributions to the program were the one-year

delay of Standard 208 and its proposal to amend the Standard further.[14]

The history of this rulemaking clearly demonstrates that NHTSA ignored its statutory mandate in an effort to aid the U.S. auto industry. Aiding the auto industry, however, is not a permissible objective under the Safety Act.[15] In voting that Act into law, Congress consciously chose to regulate automobile manufacturers in order to promote a clearly specified goal – reduction of deaths and injuries from highway accidents. With a view to achieving that goal, Congress directed NHTSA to establish mandatory motor vehicle safety standards, and unambiguously stated that safety was to be the overriding consideration. Congress quite simply did not charge NHTSA with responsibility for enhancing Detroit's economic prosperity.[16]

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[14]Three days after the booklet's release by the White House Press Office, NHTSA published a notice listing seventeen rulemaking actions – identical to those listed by the White House – which it "intend[ed] to take to reduce unnecessary regulatory burdens upon the motor vehicle and related manufacturing industries." 46 Fed. Reg. 21,203 (Apr. 9, 1981). NHTSA said that its review of these regulations would consider, among other factors, "the policy of the new Administration strongly to prefer the operation of market or individual consumer choice to define and achieve societal goals." *Id.* at 21,204.

[15]Congress, of course, can provide financial assistance to the automobile industry if it so chooses. For example, its decision to pass the federally guaranteed loan program for Chrysler was an affirmative decision to assist the industry.

[16]In any event, federal safety regulations are not responsible for Detroit's economic problems. Professor Nordhaus concluded in his cost-benefit study of Standard 208 that the estimated impact of its rescission would be "miniscule" and that it would lead to "little or no improvement in the health of the domestic automobile industry." Nordhaus Comments, *supra*, at 2. A substantial percentage of the costs of complying with Standard 208 was expended by the manufacturers in research, development and tooling-up before Standard 208 was revoked; such costs are obviously unrecoverable. Finally, the rescission of Standard 208 has no effect on the ability of American manufacturers

III. SEAT BELT EDUCATION CAMPAIGNS DO NOT WORK AND ARE NOT AN EFFECTIVE SUBSTITUTE FOR PASSIVE RESTRAINTS.

Since 1981, NHTSA has seriously suggested only one safety-oriented alternative to passive restraints – seat belt education campaigns. When NHTSA proposed to rescind Standard 208, it also announced plans to undertake an intensive program to increase seat belt usage. NHTSA expressed confidence that "a properly conceived and sustained [seat belt education] program, aided by manufacturers and other levels of government, would make an important contribution to vehicle safety." 46 Fed. Reg. 21,205; 21,206 (Apr. 9, 1981); C.A. App. 13. NHTSA's actual rescission notice a few months later reported that the agency, with expected help from state governments and the private sector, had begun "the process of expanding and initiating major national belt use educational programs of unprecedented scale." 46 Fed. Reg. 53,419, 53,424 (Oct. 29, 1981); C.A. App. 7. NHTSA asserted that its educational campaign might be able to accomplish the same results as Standard 208, but at considerably lower cost. If the educational campaign failed to produce the desired results, NHTSA concluded, it could always reopen the rulemaking proceeding – neglecting to mention that the campaign's failure would be tallied up in deaths and injuries that a new rulemaking could not undo.

NHTSA's optimism about the benefits of seat belt education programs has absolutely no basis in fact or experience. Education campaigns have been mounted nationwide and in selected geographic regions, and they have

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to compete with foreign carmakers. All cars sold in this country must meet the same safety standards, regardless of where they are manufactured, so that Standard 208 would have offered foreign manufacturers no competitive advantage.

invariably failed to bring about any significant increase in seat belt usage. The National Safety Council conducted a $51.5 million dollar program in 1968, and repeated the effort in 1972 and 1973; surveys indicated no increase in seat belt use as a result. Insurance Institute for Highway Safety, *Status Report,* June 24, 1981 at 1. In 1977 the domestic automobile manufacturers financed a $1.75 million campaign to promote belt usage in Detroit and nearby towns; the Department of Transportation studied the effects of this media blitz and concluded that there has been "no response." *Id.* at 3. In short, as Professor Nordhaus noted in his comments to the docket, "previous studies indicate[ ] that public education campaigns to increase belt usage are not effective." Nordhaus Comments, *supra,* at 2.

Other countries have experienced the same disappointing results from seat belt promotional efforts. France mounted a six-month campaign in 1973; the campaign's failure to raise seat belt usage to acceptable levels was one of the main arguments used to support enactment of a mandatory belt use law later that year. A nine-month educational campaign undertaken by the Province of Ontario, Canada in 1974 succeeded in increasing belt usage by only two percent; Ontario passed a mandatory belt usage law in 1975.

NHTSA's sudden enthusiasm about the benefits to be expected from seat belt education is particularly surprising in view of the negative assessments it has made of such prospects in the past. As early as 1969, NHTSA recognized that a very low percentage of vehicle occupants used their seat belts and concluded that "the interests of motor vehicle safety demand the prompt development and installation of passive restraints." 34 Fed. Reg. 11,148 (July 2, 1969); C.A. App. 2503. The persistence of low usage

rates led the Government in 1972 to proclaim that "seat belts have failed as a safety measure and their usage rates are likely to remain low." Brief for the United States at 89, *Chrysler* v. *Department of Transportation*, 472 F.2d 659 (6th Cir. 1972). In 1976, the Secretary of Transportation discussed the low levels of seat belt usage and recognized that "*much of the potential for reducing deaths and injuries through occupant protection systems can be realized only through installation of passive restraints.*" Secretary's 1976 Decision, *supra*, at 30; C.A. App. 2097. (emphasis in original).

Although the Department in 1976 did not recommend immediate implementation of a mandatory passive restraint standard, it did not view an educational campaign to promote use of conventional manual belts as the answer either. Rather, the Department recommended "a large-scale demonstration program to exhibit the effectiveness of passive restraints." *Id.*; C.A. App. 2073. The decision to promulgate Standard 208 in 1977 was strongly influenced by the continuing problem of low belt usage, compounded by the dismal prospects for increasing usage through educational campaigns. 42 Fed. Reg. 34,289, 34,290 (June 30, 1977); C.A. App. 1735. Since 1977, the problem has only become exacerbated, with usage rates dropping from approximately 20% to about 11% today.

Consistent with the spirit of the present Administration, NHTSA has promoted seat-belt education as a sort of "free market" option, dismissing the passive restraint standard as an effort "to force people to accept protection that they do not choose for themselves." 46 Fed. Reg. at 53,426; C.A. App. 8. Given Congress' purposes in passing the Safety Act, however, it is not enough for NHTSA to give people the option of wearing manual belts, to inform them of the advantages of doing so, and to let them suffer

the consequences if they decide not to buckle up. The Government does not promote a "free market" in unsafe drugs, poorly-designed airplanes, or impure foods, and Congress did not intend NHTSA to promote a free market in unsafe cars. NHTSA's notion that it need not protect people who through misinformation, forgetfulness, or irresponsibility fail to use seatbelts makes a mockery of the humane purposes of the Safety Act. Congress was obviously aware that accidents could be reduced if everyone drove more carefully. Shocked by the human tragedies caused by automobile accidents, however, Congress rejected utopian dreams and acted to reduce vehicle deaths and injuries by requiring improvements in vehicle design. NHTSA's mandate is to implement improvements in vehicle design, not to second-guess Congress' judgment about the perfectibility of human nature.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

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